

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WILSON VALLEJO,

Petitioner,

Case No. 05-CV-70768DT

v.

H.J. MARBERRY,

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

On March 1, 2005, Petitioner Wilson Vallejo, who is currently incarcerated at the Federal Correctional Institution in Milan, Michigan, filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241. On April 5, 2005, the Court issued an Order of Summary Dismissal. Petitioner has filed a Notice of Appeal. Thus, the Court must determine whether Petitioner is entitled to a certificate of appealability ("COA"). See *Castro v. United States*, 310 F.3d 900, 901-02 (6th Cir. 2002) (holding that "a district judge must issue or deny a COA if an applicant files a notice of appeal" without awaiting the filing of an application for a certificate of appealability).

Before Petitioner can appeal the Court's decision, a certificate of appealability under 28 U.S.C. § § 2254(c)(1)(A) and Fed. R. App. P. 22(b) must issue. A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The substantial showing threshold is satisfied when a petitioner demonstrates "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v.*

McDaniel, 529 U.S. 473, 484 (2000). Where the petition is dismissed on procedural grounds, the petitioner must show “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Id.* (quoting *Barefoot v. Estelle*, 463 U.S. 890, 898 n.4 (1983)).

Petitioner’s Notice of Appeal does not state particularly why a certificate should issue under the standard set forth in *Slack*. Where Petitioner does not provide a reasoned explanation to suggest why reasonable jurists would debate the Court’s conclusion, the Court relies on all the reasons stated in its Order of Summary Dismissal and concludes that Petitioner is not entitled to a certificate of appealability.

Accordingly, for the foregoing reasons, IT IS ORDERED that Petitioner’s Request for Certificate of Appealability is DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 10, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 10, 2005, by electronic and/or ordinary mail.

S/Lisa G. Teets
Case Manager and Deputy Clerk
(313) 234-5522

